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FORM 3

**NOTICE OF CHANGE OF BYLAWS**  
(The Condominium Property Act, S. 32)

**POINTE OF VIEW - CONDOMINIUM CORPORATION**

Condominium Corporation No. 0712898 (the "Corporation") hereby certifies that by a special resolution passed on the 31st day of May, 2007, the Bylaws of the Corporation were added to, amended or repealed as follows:

"Be it resolved as a special resolution of the Condominium Corporation No: 0712898 (the "Corporation") that the Bylaws of the Corporation as previously registered either Statutory or otherwise, be and they are hereby repealed and the Bylaws hereto annexed are hereby adopted as and made the Bylaws of and applicable to the Corporation and the Parcel referred to in Condominium Plan No: 0712898 from and after the date of this resolution."

IN WITNESS WHEREOF the seal of the Condominium Corporation No. 0712898 was affixed on the 31st day of May, 2007 in the presence of:

CONDOMINIUM CORPORATION  
NO: 0712898

Per:   
RANDY KLAPSTEIN

Per:   
CLARK HOGAN

**P.O.V. DEVELOPMENTS (DOWNTOWN) INC.**

**BY-LAWS OF  
CONDOMINIUM CORPORATION NO : 0712898**

**Vantage Pointe**

**IN SUBSTITUTION OF INITIAL BY-LAWS OF THE CORPORATION  
PURSUANT TO SECTION 33 OF THE CONDOMINIUM PROPERTY ACT,  
R.S.A. 2000, c.-22, if and as amended**

<b>INDEX</b>	<b>PAGE</b>
Definitions & Interpretation	02
Headings	04
Duties Of Owners	05
Duties & Powers Of The Corporation	07
The Board	10
Representative Of Company On Board	10
Signing Authorities	13
Corporate Seal	13
General Meeting	13
Notice Of General Meeting	14
Proceedings At General Meetings	14
Votes Of Owners	15
Violation Of By-laws	16
Damage Or Destruction	16
Insurance	18
Assessments For Common Expenses And Budgets	21
Capital Replacement Reserve Fund	25
Special Assessments	25
Default In Payment Of Assessments	25
Estoppel Certificate	26
Leasing Of Units	26
Distribution On Termination	27
Exclusive Use	27
Realty Taxes	27
Indemnification Of Officers And Managers	27
Non-profit Corporation	28
Use And Occupancy Restrictions	28
Parking Areas	31
Further Covenants	33
Use Of Recreation Areas	34
Release And Discharge Of The Developer	34
Consents And Assurances By The Corporation	34
Use Of Common Property	34
Developer Rights	35
Developer=s Exemption from Fees	35
Severability	36
Notices	36
Amendment Of By-laws	36

**NOTE:** These By-Laws have been passed by The Owners: Condominium Corporation Number: 071 2898 for the purpose of repealing, replacing and substituting the By-Laws set out in the Schedule of The Condominium Property Act being Chapter C-22 of the Revised Statutes of Alberta, 2000, and amendments thereto.

## DEFINITIONS AND INTERPRETATION

1. In these By-Laws unless the context or subject matter requires a different meaning:
  - (a) "**Act**" means THE CONDOMINIUM PROPERTY ACT, Revised Statutes of Alberta, 2000, Chapter C-22, as amended from time to time or any statute passed in substitution therefore;
  - (b) "**Amenities**" means, with respect to the Building, the improvements made to the Unit upon which the Building is located and the adjacent Common Property including sidewalks, paving, landscaping, utility lines and connections and any other such improvements intended by the Developer for the use and enjoyment of the persons occupying the Building;
  - (c) "**Architect's Certificate**" means a certificate provided by the Developer to the Corporation pursuant to By-Law 60 certifying substantial completion of any building and its Amenities and specifying the deficiencies or uncompleted work, if any, with respect thereto;
  - (d) "**Board:** means Board of Directors of the Corporation;
  - (e) "**Building**" means the Development constructed by the Developer on the Parcel;
  - (f) "**By-Laws**" means the By-Laws of the Corporation, as amended from time to time;
  - (g) "**Capital Replacement Reserve Fund**" means the fund established by the Board to be used for the repair or replacement of any real and personal property owned by the Corporation, or required to be maintained by the Corporation;
  - (h) "**City**" means the City of Calgary, a municipal corporation;
  - (i) "**Commercial Owner**" means the Developer as the original owner of the Commercial Space and its successors in title from time to time as owner or owners of the Commercial Space;
  - (j) "**Commercial Space**" means the Retail Units;
  - (k) "**Commercial Unit**" means units on the second floor of the Building developed for the purposes of commercial and/or retail space or office space;
  - (l) "**Common Expenses**" means the expense of performance of the objects and duties of the Corporation and any expenses specified as Common Expenses in these By-Laws;
  - (m) "**Common Property**" means so much of the Parcel as is not comprised in or does not form a part of any Unit shown on the Condominium Plan;
  - (n) "**Condominium Plan**" means the plan registered by the Developer under the Act with respect to the Residential Development as plan number 0712898;
  - (o) "**Corporation**" means the Corporation constituted under the Act by the registration of the Condominium Plan;
  - (p) "**Developer**" means P.O.V. Developments (Downtown) Inc., and its successors and assigns;

- (q) **“Development”** means the integrated high rise complex that is comprised of Residential Development and the Commercial Space within the Building that the Developer has constructed on the Parcel;
- (r) **“Easements and Covenants”** means those easements and covenants registered at the South Alberta Land Titles Office for the purposes of recording the rights and obligations of respective owners, licencees, invitees and guests with respect to the operation of the Building and adjoining landowners;
- (s) **“Equipment”** means the heating, ventilating, air conditioning, elevating and other equipment to be installed by the Developer in the Building and necessary for the operation thereof;
- (t) **“Interest Rate”** means the rate of interest per annum which may be or shall become payable hereunder by an Owner in respect of monies owing by him to the Corporation and shall be equal to the commercial prime rate in Edmonton of the Royal Bank of Canada plus TWO (2%) PERCENT on the earliest date on which any portion of the said monies becomes due and payable by an Owner;
- (u) **“Manager”** means the professional manager first retained by the Developer or any successor contractually appointed by the Board;
- (v) **“Owner”** means a person who is registered as the Owner of the fee simple estate in a Unit;
- (w) **“Parcel”** means the land comprised in the Condominium Plan;
- (x) **“Parkade”** means the underground parking garage within condominium plan 051 0908 as units 3 and 4 of condominium plan 051 0908 have been re-divided by condominium plan 051 0924 and intended to be used as parking for the Owners;
- (y) **“Parkade Condominium Corporation”** means that corporation constituted by the Act upon registration of the condominium plan for the Parkade;
- (z) **“Parking Unit”** means a unit within the Parkade to be used for parking purposes by an Owner;
- (aa) **“Recreational Facilities”** means the recreational facilities and other amenities included in the Building consisting of at least a fitness center (including stationary exercise equipment);
- (bb) **“Residential Development”** means that portion of the Building constructed on the Parcel, excluding only the Commercial Space;
- (cc) **“Residential Unit”** means a Unit within the Residential Development as shown on the Condominium Plan;
- (dd) **“Restrictive Covenant and Cross-Easement”** means that agreement made effective the 11th day of May, 2007 and made amongst the Developer as owner of the Commercial Space, the Developer as owner of the Residential Development, the Developer, Condominium Corporation No. 0510908 as registered owner of the Parkade, and the City;

- (ee) **“Retail Units”** means that portion of the ground floor of the Development which is comprised of the two strata titles shown on the strata plan registered in respect of the Commercial Space and legally described as Plan 071 2898, Block 63, Strata Lot 47, Excepting Thereout All Mines and Minerals; and **“Retail Unit”** means any one of the Retail Units;
- (ff) **“Special Resolution”** means:
  - (i) a resolution passed at a properly convened meeting of the Corporation, of which at least seven (7) days prior notice specifying the proposed resolution has been given, by a majority of not less than 75% of all the persons entitled to exercise the powers of voting conferred under the Act or these By-Laws and representing not less than 75% of the total Unit Factors for the Residential Units; or
  - (ii) a written resolution signed by not less than 75% of all of the persons who, at a properly convened meeting of the Corporation, would be entitled to exercise the powers of voting conferred by the Act or these By-Laws and representing not less than 75% of the total Unit Factors for the Residential Units for all the Units;
- (gg) **“Unit”** means in the case of the Residential Development, a space that is situated within the Building and described as a Unit in the Condominium Plan by reference to floors, walls and ceilings within the Building and the only portion of that floor, wall or ceiling, as the case may be, that forms part of the Unit is the finishing material that is in the interior of the Unit, including any lath and plaster, paneling, gypsum board, panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling as the case may be, excluding exterior windows, exterior doors, and hallway doors;
- (hh) **“Unit Factor”** means the unit factor for each Unit as more particularly specified or apportioned and described in and set forth on the Condominium Plan.

Subject to the foregoing, words and expressions which have a special meaning assigned to them in the Act have the same meaning in these By-Laws and other expressions used in these By-Laws and not defined in the Act or in these By-Laws have the same meaning as may be assigned to them in THE LAND TITLES ACT of Alberta, as amended from time to time or in any statute or statutes passed in substitution therefore. Words importing the masculine gender include the feminine gender or neuter, and vice versa, and words importing persons include firms and corporations and vice versa, where the context so requires.

## HEADINGS

- 2. (a) The headings used throughout these By-Laws are inserted for reference purposes only, and shall not be considered or taken into account in construing the terms or provisions of any By-Law;
- (b) The rights and obligations given or imposed on the Corporation by the Owners under these By-Laws are in addition to any rights or obligations given or imposed on the Corporation under the Act;
- (c) If there is any conflict between the By-Laws and the Act, the Act shall prevail to the extent permitted by law.

## DUTIES OF THE OWNER

3. An Owner shall:

- (a) permit the Corporation and its agents, at all reasonable times, on notice (except in case of emergency when no notice is required), to enter his Unit for the purpose of inspecting the Unit and maintaining, repairing or renewing pipes, wires, cables, ducts, conduits, plumbing, sewers and other facilities for the furnishing of utilities for the time being existing in the Unit and capable of being used in connection with the enjoyment of any other Unit or Common Property, or for the purpose of maintaining, repairing or renewing either the Unit or the Common Property, or for the purpose of ensuring that the By-Laws are being observed;
- (b) permit the Corporation and its agents, at all reasonable times, access to the Unit and the Common Property to maintain in good order and condition any lawn trees or landscaped area and to maintain and repair the exterior or outside surfaces of the Building forming part of the Units or the Common Property including exterior windows and doors and all other outside accouterments affecting the appearance, usability, value or safety of the Parcel or the Units;
- (c) forthwith carry out all work that may be ordered by any municipality or public authority in respect of his Unit and pay all rates, taxes, charges, outgoing and assessments that may be payable in respect of his Unit;
- (d) repair and maintain this Unit, excluding all exterior windows and sliding glass doors, outer boundaries, walls and other outside surfaces and roofs and eaves troughs and all other outside hardware and accouterments affecting the appearance, usability, value or safety of the Unit, and keep it in a state of good repair, except such damage as is insured against by the Corporation; and shall maintain in reasonable manner any area which is located on or which comprises any part of the Common Property to which the Owner has been granted exclusive use pursuant to By-Law 54 and if the Owner does not maintain such area to a standard similar to that of the remaining Common Property, the Corporation may give one month's notice to the Owner to this effect and if such notice has not been complied with at the end of the month, then the Corporation may carry out such work and the provisions of By-Law 44 shall apply;
- (e) not make any repairs, additions or alterations to the exterior of his Unit or the Building (including interior and exterior load bearing and partition walls) of which his Unit forms a part or to the plumbing, mechanical or electrical systems within his Unit without first obtaining the written consent of the Corporation;
- (f) strictly comply with the architectural and landscaping guidelines of the Corporation in effect from time to time;
- (g) not place or erect on any Unit any structure without the prior approval by the Board;
- (h) use and enjoy the Common Property in such a manner as to not unreasonably interfere with the use and enjoyment thereof by other Owners, their families or visitors;
- (i) not use his Unit or permit it to be used in any manner for any purpose which may be illegal, injurious or that will cause nuisance or hazard to any occupier of another Unit (whether an Owner or not) or the family of such an occupier;

- (j) notify the Corporation forthwith upon any change of ownership or of any mortgage or other dealing in connection with his Unit;
- (k) not enter nor permit his family or visitors to enter upon the Unit of another Owner (other than the Common Property) without the permission of the Owner;
- (l) comply strictly with these By-Laws and with such rules and regulations as may be adopted pursuant thereto from time to time and cause all adult occupiers of and visitors to his Unit to similarly comply;
- (m) pay to the Corporation when due all Common Expenses levied or assessed against his Unit together with interest on any arrears thereof at the Interest Rate calculated from the due date;
- (n) maintenance of Common Property located within Commercial Units and Residential Development:
  - (i) The Owner of the Commercial Unit shall maintain and repair the Common Property located within those Units;
  - (ii) Notwithstanding the responsibility of the Owner of the Commercial Unit to maintain and repair the Common Property located within such, the Corporation shall maintain all structural components of the Common Property, including the elevator of the Common Property located within such Units;
  - (iii) The Owner of the Commercial Unit shall be responsible for the repair and maintenance of the interior of the Common Property located within such Unit(s), with the exception of structural components, and in particular, shall be responsible for the declaration, cleanliness, and care of the Common Property located within such Unit(s). If any Owner of such Unit(s) should fail to clean, maintain, and/or repair, in a manner satisfactory to the Board or its representative, those items for which the Owner is responsible, after ten (10) days written notice to do so given by the Board or its representative, then the Board or its representative may do or cause to be done the cleaning, maintenance or repair and the Owner of such Unit(s) affected is obliged to and shall reimburse the Corporation for all monies expended for labor, materials, normal overhead and profit, and all costs incurred in collection in respect of the doing of such cleaning, maintenance or repairs; and the Board or its representative may use any or all of the remedies open to it as hereinafter set out to recover such monies for the Corporation together with interest thereon at the rate herein provided for overdue assessments and such monies shall be a charge upon his Unit to the same extent as they would be if they were Common Expense charges assessed upon his Unit;
  - (iv) Notwithstanding anything to the contrary herein expressed or implied, each owner of the Commercial Unit shall be responsible for damage caused to all items in the Unit or the Common Property by any willful or negligent acts of the Owner, its employees, its invitees, contractors or licensees that are not required by these By-Laws to be insured against by the Corporation (or in fact insured against by it whether required or not); and should any Owner fail to repair in a manner satisfactory to the Board or its representative then the Board or its representative may do or cause to be done such repair; and the Owner affected agrees to and shall reimburse the Corporation for all monies expended for labor, materials, normal overhead and profit and all costs incurred in collection in respect of the doing of such repairs and the Board or its representative may use all or any of the remedies open to it as hereinafter set out to recover such



monies for the Corporation together with interest thereon as herein provided for overdue assessments and such monies shall be a charge upon his Unit to the same extent as they would be if they were Common Expense charges assessed upon his Unit;

- (v) The Owner of the Commercial Unit shall be responsible for replacement of interior fixtures and chattels caused by normal wear and tear or where such loss is caused by the willful or negligent acts of the Owner, employees, or their invitees, contractors or licensees;
- (o) comply with By-law 4 (m), below.
- (p) comply with all Easements and Covenants;
- (q) comply with all the rules, regulations and By-laws of the Parkade Condominium Corporation;

#### **DUTIES AND POWERS OF THE CORPORATION**

- 4. In addition to the duties of the Corporation set forth in the Act, the Corporation, through its Board, shall:
  - (a) control, manage, maintain, repair and administer the Common Property and all real property, chattels, personal property or other property owned by the Corporation for the benefit of all of the Owners and for the benefit of the Residential Development;
  - (b) do all things required of it by the Act, these By-Laws and other rules and regulations in force from time to time;
  - (c) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables, ducts, conduits, plumbing, sewers and other facilities for the furnishing of utilities for the time being existing in the Parcel and capable of being used in connection with the enjoyment of more than one Unit or the Common Property;
  - (d) provide and maintain in force all such insurance as is required by the Act and by the provisions of these By-Laws and, on the written request of an Owner, purchaser or registered mortgagee of the Unit, produce to the Owner or mortgagee, a certified copy of the policy or policies of insurance effected by the Corporation or a certificate of memorandum thereof and the receipt for the last premium in respect thereof;
  - (e) maintain and repair the exterior or outside surface of the building comprising the Units (including exterior windows and doors and all other outside accouterments affecting the appearance, usability, value or safety of the Parcel or the Units) and the Common Property including any landscaping which is located on any part of the Common Property and all fencing and posts;
  - (f) collect and receive all contributions towards the Common Expenses and deposit same in a separate account with a chartered bank;
  - (g) pay all sums of money properly required to be paid on account of all services, supplies and assessments pertaining to or for the benefit of the Parcel, the Corporation and the Owners as the Board may seem justifiable in the management or administration of the entire project;

- (h) remove ice, snow, slush and debris from and keep and maintain in good order and condition all:
  - (i) areas of the Common Property designated for vehicular or pedestrian traffic or outside parking; and
  - (ii) all grassed or landscaped areas of the Common Property;

PROVIDED THAT the maintenance of any exclusive use area designated under By-Law 54 shall be the prime responsibility of the Owner to whom such privacy area has been assigned;

- (i) provide garbage receptacles or containers on the Common Property for use by all the Owners and provide for regular collection therefrom;
  - (j) at all times keep and maintain for the benefit of the Corporation and all Owners copies of the warranties, guarantees, drawings and specifications, plans, written agreements, certificates, approvals and permits provided to the Corporation pursuant to Section 46 of the Act;
  - (k) not plant any trees or permit substantial landscaping within any lands which are the subject of an easement or similar grant to any utility company, municipality or local authority;
  - (l) comply with all Easements and Covenants.
  - (m) The Corporation shall:
    - (i) observe, adhere to and be bound to all the covenants, restrictions and prohibitions contained in the Restrictive Covenant and Cross-Easement; and
    - (ii) not allow for any amendment, alteration or termination of the Restrictive Covenant and Cross Easement and, notwithstanding section 68, not allow for the amendment or alteration to these By-laws or the approval or authorization of any action on the part of the Corporation which in either of such circumstances would or may cause the breach of section 4 (m) (i), above.
5. In addition to the powers of the Corporation set forth in the Act, the Corporation, through its Board, may and is hereby authorized to:

- (a) purchase, hire or otherwise acquire personal property for use by Owners in connection with the maintenance, repair, replacement or enjoyment of the real and personal property of the Corporation or the Common Property; without limiting the preceding provisions, as the Corporation and the Commercial Owner share and use certain common mechanical and electrical systems and equipment that service both the Residential Development and the Commercial Space, the Corporation may enter into agreements with the Commercial Owner relating to the use and modification (collectively, "Modifications") to any of the mechanical and electrical systems and equipment that service the Retail Units provided: (i) the Modifications do not adversely affect the mechanical and electrical systems that service the Residential Development; and (ii) the Corporation shall not be required to pay any costs in connection with the Modifications requested by the Commercial Owner that are for the benefit or use of the Retail Units or the Commercial Owner;

- (b) borrow monies required by it in the performance of its duties or the exercise of its powers provided that each such borrowing in excess of 15% of the current year's Common Expenses budget has been approved by Special resolution;
- (c) secure the repayment of monies borrowed by it and interest thereon, by negotiable instrument, a mortgage of unpaid contributions (whether levied or not), or a mortgage of any property vested in it, or by any combination of those means;
- (d) invest, as it may determine, any contributions towards the Common expenses SUBJECT TO the restrictions set forth in the Act;
- (e) make an agreement with an Owner, tenant or other occupier of a Unit for the provision of amenities or services by it to the Unit or to the Owner, tenant or occupier thereof;
- (f) grant to an Owner a lease with respect to areas adjoining or relating to such Owner's Unit, as shown on the Condominium Plan, under the Act, on such terms and conditions as may be determined by the Board from time to time PROVIDED THAT such lease shall be available for the benefit only of Owners, purchasers, tenants and other lawful occupants of such Unit, shall not be assignable to anyone who is not an Owner or purchaser by Agreement for Sale of such Unit and shall be terminable on 30 days notice by the Corporation as against any grantee, lessee or assignee who ceased to be an Owner or occupier under Agreement for Sale of such Unit;
- (g) grant to an Owner the right to exclusive use and enjoyment of part of the Common Property (including storage area and extra parking space) or special privileges in respect thereof. This grant shall not be assignable to anyone who is not an Owner or purchaser by agreement for sale of such Unit, may be terminated on reasonable notice, unless the Corporation by Special Resolution otherwise resolves;
- (h) make such rules and regulations as it may deem necessary or desirable from time to time in relation to the use, enjoyment and safety of the Common Property and do all things reasonably necessary for the enforcement of the By-Laws and for the control, management and administration of the Common Property generally including the commencement of an action under the Act and all subsequent proceedings relating thereto;
- (i) provide and maintain out of the assessments to be levied by the Corporation towards the Common Expenses, or otherwise, such amount as the Board may determine from time to time to be fair and prudent for replacement and contingency reserve funds. Reserve funds shall be assets of the Corporation;
- (j) determine from time to time the amounts to be raised and collected for the purpose hereinbefore mentioned including, without limitation, the Capital Replacement Reserve Fund;
- (k) raise amounts so determined by levying assessments on the Owners in proportion to the Unit Factors for their respective Units or as otherwise herein provided;
- (l) charge interest on any contribution or Common Expenses owing to it by an Owner at the Interest Rate.

## THE BOARD

6. The Powers and duties of the Corporation shall, subject to any restriction imposed or direction given at a general meeting or these By-Laws, be exercised and performed by the Board.
7. (i) Ownership of a Unit is not necessary for election to and membership on the Board. Any person who has attained the age of majority shall be eligible for nomination and election to the Board. Where a Unit has more than one Owner, only one Owner in respect of that Unit may sit on the Board at any point in time.  
  
(ii) Where there are no Mortgagees and not more than three (3) Owners, the Board shall consist of all Owners or such person or persons in such number as the Owners of all Units may designate.

## REPRESENTATIVE OF COMPANY ON BOARD

8. (a) A company which is an Owner may by proxy, power of attorney or resolution of its directors, appoint such person or persons as it thinks fit to act as its representative, shall be entitled to so act provided notice in writing thereof shall have been given to the Board. Where a representative or representatives of a company is (are) the only member(s) of the Board a minute or resolution signed by the representative(s) or by the alternate(s) of its representative(s) duly appointed pursuant to the paragraph next following shall be deemed to be a resolution of the Board;  
  
(b) A representative of a company on the Board may appoint any person whether another Owner or not and whether a member of the Board or not to serve as his alternate representative on the Board and as such, to attend and vote in his stead at meetings of the Board and to do anything specifically provided for in these By-Laws. Such alternate shall, if present, be included in the count for quorum and if he be a member of the Board he shall be entitled to two votes, one as a member of the Board and the other as an alternate representative. Notice of meetings of the Board shall be sent to the alternate representative of a member of the Board if and when an appointed representative vacates the office of a representative of a member of the Board or removes the alternate representative from office as alternate representative, and any appointment or removal under this By-Law shall be made in writing under the hand of the representative making the same.
9. (a) The Board shall consist of not less than 5 and not more than 9 members;  
  
(b) No more than two (2) registered Mortgagees or representatives of them may be members of the Board at any one time.
10. At each annual general meeting of the Corporation all the members of the Board shall retire from office and the Owners shall elect a new Board. Prior to the Final Turnover Date, the Owners shall vote their shares in such a manner as will elect to at least fifty percent (50%) of the positions on the Board, nominees of the Developer unless the Developer fails or otherwise elects not to nominate any or sufficient persons for such positions.
11. A retiring member of the Board shall be eligible for re-election.

12. The Corporation may, by resolution at an extraordinary general meeting, remove any member of the Board before the expiration of his term of office and appoint another Owner in his place, to hold office until the next annual meeting.
13. Where a vacancy occurs on the Board under By-Law 21, the remaining members of the Board may appoint a person to fill that office for the remainder of the former member's term provided such person qualifies for membership pursuant to By-Law 7.
14. Except where there is only one Owner and except during the period before the first annual general meeting, a quorum is the majority of the membership of the Board.
15. At the first meeting of the Board and at each meeting held after an annual general meeting of the Corporation, the Board shall elect from among its members a President and a Secretary who shall hold their respective offices until the conclusion of the next annual general meeting of the Corporation or until their successors are elected or appointed. The President shall be the Chairman of the Board and shall have a casting vote in addition to his original vote. A person ceases to be an officer of the Corporation if he ceases to be a member of the Board. Where a person ceases to be an officer of the Corporation, the Board shall designate from its members a person to fill that office for the remainder of the term.
16. The duties of the officers of the Board shall be as determined by the Board from time to time.
17. At meetings of the Board all matters shall be determined by simple majority vote. A resolution of the Board in writing signed by all of the members shall have the same effect as a resolution passed at a meeting of the Board duly convened and held.
18. The Board may:
  - (a) meet together for the conduct of business, adjourn and otherwise regulate its meeting as it thinks fit, and it shall meet when any member of the Board gives to the other members of the said Board not less than three (3) days' notice of a meeting proposed by him, specifying the reason for calling the meeting, provided that the Board shall meet at the call of the President on such notice as he may specify without the necessity of the President giving reasons for the calling of the meeting;
  - (b) appoint or employ for, and on behalf of the Corporation such agents or servants as it thinks fit in connection with the control, management and administration of the Common Property and the exercise and performance of the powers and duties of the Corporation;
  - (c) subject to any restriction imposed or direction given, at a general meeting of Owners, delegate to one or more members of the Board such of its powers and duties as it thinks fit, and at any time revoke such delegation;
  - (d) obtain and retain by contract the services of a manager for management of the Units and Common Property or of any professional real property management firm or professional real property manager or agent for such purpose (including but not so as to limit the generality of the foregoing the supervision, management and performance of any or all of the duties of the Corporation) and upon such terms as the Board may from time to time decide SUBJECT ALWAYS to the control and direction of the Corporation and the Board, such Manager to be reasonably fit and suited to perform such duties. The Manger employed by the Board need not

devote its full time to the performance of duties of the Corporation so long as those duties are performed in good and sufficient fashion. Any such contract shall provide for the contract Manager to maintain a fidelity bond for the benefit of the naming the Corporation and such bond shall be in an amount at least equal to one-half (2) of the approved budget of the Corporation in any given fiscal year and the total amount of any replacement and contingency reserve funds. At all times when the Board consists only of nominees of the Developer no such contract shall provide for an initial term in excess of two (2) years and the termination provisions of the Act shall apply thereto.

19. The Board shall:
  - (a) keep minutes of its proceedings and, upon written request, provide copies thereof to first mortgagees;
  - (b) cause minutes to be kept of general meetings of the Owners and upon written request, provide copies thereof to first mortgagees;
  - (c) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which receipt and expenditure take place;
  - (d) prepare proper accounts relating to all monies of the Corporation, and the income and expenditure thereof, for each annual general meeting;
  - (e) maintain financial records of all assets, liabilities and equity of the Corporation;
  - (f) on written application of an Owner or mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times;
  - (g) cause to be prepared and distributed to each Owner and to each mortgagee who has notified its interest to the Corporation a financial statement of the receipts of contributions of all Owners towards the Common Expenses and disbursements made by the Corporation within ninety (90) days of the end of the fiscal year of the Corporation;
  - (h) within fifteen (15) days of a person becoming or ceasing to be a member of the Board, file or cause to be filed at the Land Titles Office a notice in the prescribed form stating the name and address of that person and the day that the person became or ceased to be, as the case may be, a member of the Board;
  - (i) file or cause to be filed at the Land Titles Office a notice in the prescribed form of any change in the address for service of the Corporation.
20. All acts done in good faith by the Board are, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any member of the Board, as valid as if the member had been duly appointed or had duly continued in office.
21. The office of a member of the Board shall be vacated if the member:
  - (a) by notice in writing to the Corporation resigns his office; or

- (b) is more than sixty (60) days in arrears in payment of any contribution, levy or assessment required to be made by him as an Owner or becomes bankrupt; or
- (c) is found lunatic or becomes of unsound mind, or is the subject of a Certificate of Incapacity issued under THE MENTAL HEALTH ACT, RSA 2000, Chapter M-13; or
- (d) is convicted of an indictable offense for which he is liable to imprisonment for a term of not less than two (2) years; or
- (e) is absent from meetings of the Board for a continuous period of four (4) months or four (4) consecutive meetings without the consent of the remaining members of the Board and a majority of the remaining members of the Board resolve at two (2) meetings of the Board held at least seven (7) days apart that his office be vacated; or
- (f) he ceases to qualify for membership pursuant to By-Law 7 or 8; or
- (g) in the case of a company which by its representative is a member of the Board if the company shall become bankrupt or make an assignment for the benefit of creditors or if proceedings are commenced to wind up the company, otherwise than for the purpose of amalgamation or restructuring.

#### **SIGNING AUTHORITIES**

22. The Board shall determine, by resolution from time to time, the manner and which officer or officers shall sign cheques, drafts, notes and other instruments and documents, including banking forms and authorities not required to be under corporate seal.

#### **CORPORATE SEAL**

23. The Corporation shall have a common seal, which shall be adopted by resolution and which shall at no time be used or affixed to any instrument except in the presence of at least one member of the Board or by the persons as may be authorized from time to time by resolution of the Board, except that where there is only one member of the Corporation his signature shall be sufficient for the purposes of this By-Law, and if the only member is a company the signature of its appointed representative on the Board shall be sufficient for the purpose of this By-Law.

#### **GENERAL MEETINGS**

24. The First annual general meeting of the Owner(s) of the Residential Units shall be convened by the Board within:
- (a) ninety (90) days from the date that FIFTY (50%) PERCENT of the Units are sold by the Developer, or
  - (b) one hundred and eighty (180) days from the date that the first Unit is sold by the Developer,
- whichever is sooner. Subsequent annual general meetings shall be held once in each calendar year, and not more than fifteen (15) months shall elapse between the date of one annual general meeting and that of the next.

25. All general meetings other than annual general meetings shall be called extraordinary general meetings.
26. The Board may, whenever it thinks fit, and shall, upon a requisition in writing by Owners representing not less than FIFTEEN (15%) PERCENT of the total Unit Factors for all the Units or upon the request in writing from mortgagees holding registered mortgages (and who have notified their interests to the Corporation) against Units in respect of which corresponding Unit Factors represent not less than FIFTEEN (15%) PERCENT of the total Unit Factors or a combination of such Owners or mortgagees entitled to vote with respect to FIFTEEN (15%) PERCENT of the total Units Factors, convene an extraordinary general meeting.

#### **NOTICE OF GENERAL MEETING**

27. Seven (7) days' notice of every general meeting specifying the place, the date and the hour of meeting, and in the case of special business the general nature of such business shall be given to all Owners and first mortgagees or Residential Units, only, who have notified their interests to the Corporation. Notice shall be given to the Owners and to such mortgagees in the manner prescribed in these By-Laws, but the accidental omission to give notice to an Owner or mortgagee or non-receipt by an Owner or mortgagee does not invalidate the meeting or any proceedings thereat. In computing the number of days notice of a general meeting required under these By-Laws, the day on which the notice is deemed to have been received and the day of the meeting shall be counted.

#### **PROCEEDINGS AT GENERAL MEETINGS**

28. All business that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the Board, or at any extraordinary general meeting shall be deemed special.
29. Save as in these By-Laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting commences. A quorum for a general meeting consists of not less than one-quarter of the persons entitled to vote being present in person or by proxy at that meeting.
30. If within one-half hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting, the persons entitled to vote who are present or represented by proxy shall be a quorum.
31. The President of the Board or his nominee shall be the Chairman of all general meetings.
32. The Order of Business at general meetings, and as far as is appropriate at all extraordinary general meetings, shall be:
  - (a) the election of the Chairman of the meeting;
  - (b) calling of the roll and certifying the proxies;
  - (c) proof of notice of meeting or waiver of notice;



- (d) reading and approval of any unapproved minutes;
- (e) reports of officers;
- (f) reports of committees;
- (g) financial report;
- (h) appointment of auditors;
- (i) election of the Board;
- (j) unfinished business;
- (k) new business;
- (l) adjournment.

#### **VOTES OF OWNERS**

- 33. At any general meeting a resolution by the vote of the meeting shall be decided by a show of hands, unless a poll is demanded by any Owner or registered mortgagee present in person or by proxy. Unless a poll be so demanded, a declaration by the Chairman that a resolution has, on the show of hands, been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favor or against the resolution. Except for matters requiring a Special Resolution, all matters shall be determined by majority vote.
- 34. A poll, if demanded, shall be taken in whatever manner the Chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In the case of equality in the votes, whether on a show of hands or on a poll, the Chairman of the meeting is entitled to a casting vote in addition to his original vote. A demand for a poll may be withdrawn.
- 35. On a show of hands, each person entitled to vote for any Unit shall have one vote for that Unit. On a poll, the votes of persons entitled to vote shall correspond with the Unit Factors for the respective Units owned or mortgaged to them.
- 36. On a show of hands or on a poll, votes may be given either personally or by proxy.
- 37. An instrument appointing a proxy shall be in writing under the hand of the appointee or his attorney, and may be issued for a specific meeting, or as a general proxy. A proxy may be made by anyone with voting rights to the Corporation.
- 38. Except in cases whereby or under the Act a Special Resolution is required, no Owner is entitled to vote at any general meeting unless all assessments payable in respect of his Unit have been duly paid to the date thirty (30) days prior to the date of such meeting but the presence of any such defaulting Owner shall be included in the count for quorum constitution purposes pursuant to By-Law 29.
- 39. Co-Owners may vote by proxy but only if the proxy is jointly appointed by them or by one of the co-Owners appointed by the other or all others, as the case may be, and in the absence of such proxy, co-

Owners are not entitled to vote separately on a show of hands except when a Unanimous Resolution is required by the Act, but any one co-Owner may demand that a poll be taken.

40. On any poll, each co-Owner is entitled to such part of the vote applicable to a Unit as is proportionate to his interest in the Unit. The joint proxy (if any) on a poll shall have a vote proportionate to the interest in the Unit of the joint Owners as to not vote personally or by individual proxy.
41. Where Owners are entitled to successive interests in a Unit, the Owner entitled to the first interest (or if his interest is mortgaged by registered first mortgage notified to the Corporation, the mortgagee under such mortgage) is alone entitled to vote, whether on a show of hands or a poll.
42. Where an Owner is a trustee, he shall exercise the voting rights in respect of the Unit to the exclusion of person beneficially interested in the trust, and those persons shall not vote.
43. Notwithstanding the provisions of these By-Laws with respect to appointment of a proxy, where the Owner's interest is subject to a registered mortgage and where the mortgage or these By-Laws or any statute provides that the power of the vote conferred on the mortgagee shall be exercised by the mortgagee and who has given written notice of his mortgage to the Corporation, no instrument or proxy shall be necessary for a power to vote and the mortgagee's power to vote shall not be limited or proscribed by the Owner's failure to pay assessments.

#### **VIOLATION OF BY-LAWS**

44. (a) Any infraction of violation of, or default under, these By-Laws or any rules and regulations established pursuant to these By-Laws on the part of an Owner, his servants, agents, licensees, invitees or tenants may be corrected, remedied or cured by the Corporation and any costs or expenses incurred or expended by the Corporation in correcting, remedying or curing such infraction, violation or default shall be charged to such Owner and shall be added to and become part of the assessments of such Owner for the month next following the date when such costs or expenses are expended or incurred (but not necessarily paid) by the Corporation and shall become due and payable on the date of payment of such monthly assessment and shall bear interest at the Interest Rate until paid;
- (b) The Corporation may recover from an Owner by an action for debt in any court of competent jurisdiction any sum of money which the Corporation is required to expend as a result of any act or omission by the Owner, his servants, agents, licensees, invitees or tenants, which violates these By-Laws or any rules or regulations established pursuant to these By-Laws and there shall be added to any judgment, all costs of such action including costs as between solicitor and client. Nothing herein shall be deemed to limit any right of any Owner to bring an action or proceeding for the enforcement and protection of his rights and the exercise of his remedies;
- (c) In addition, the Corporation may exercise the powers provided for in section 42 of the Act.

#### **DAMAGE OR DESTRUCTION**

45. (a) In the event of damage or destruction to a Unit or Units as a result of fire or other casualty, the Board shall determine within thirty (30) days of the occurrence whether there has been substantial damage. For the purposes of this paragraph, substantial damage shall mean damage to the extent of 25% or more of the replacement value of all Units immediately prior to the occurrence. Prior to making any determination under this sub-paragraph the Board shall obtain

the opinion of an independent insurance appraiser to the effect that substantial damage has or has not occurred. If there has been substantial damage, the Board shall convene an extraordinary general meeting and give at least ten (10) days' notice by registered mail to all registered first mortgagees;

- (b) Unless there has been substantial damage and the Owners by Special Resolution resolve not to proceed with repair or restoration within one hundred (100) days after the damage or destruction, the Board shall arrange for prompt repair and restoration using proceeds of insurance for that purpose. The Board shall cause the proceeds of all insurance policies to be disbursed to the contractors engaged in such repair and restoration in appropriate progress payments. Any costs of such repairs and restoration in excess of the insurance proceeds shall constitute a common expense and the Board may assess all the Owners for such deficiency as part of the Common Expenses;
- (c) Where there has been substantial damage and the Owners resolve by Special Resolution within one hundred (100) days after the damage or destruction not to repair, the Board shall on behalf of the Owners make application to terminate the condominium status of the Parcel in accordance with the provisions of the Act, and each of the Owners shall be deemed to consent to such application. Upon termination of the condominium status:
  - (i) any liens or charges affecting any of the Units shall be deemed to be transferred in accordance with their existing priorities to the interests of the respective Owners of the Parcel; and
  - (ii) the proceeds of insurance shall be paid to the Owners and mortgagees as their respective interests may appear in proportion to their respective interests in the Parcel;
- (d) No Owner shall be entitled to claim any compensation from the Corporation for any loss or damage to the property or person of the Owner arising from any defect or want of repair of the Common Property or any part thereof, unless such loss or damage is covered by the Corporation pursuant to the Act or these By-Laws, whichever carries the greater coverage;
- (e) Where the Corporation is required to enter a Unit for the purpose of maintaining, repairing or renewing pipes, wires, cables, and ducts for the time being existing in the Unit and capable of being used in connection with the enjoyment of any other Unit or the Common Property, the Corporation and its servants, employees and agents shall in carrying out any work or repairs do so in a proper and workmanlike manner and shall make good any damage to the Unit occasioned by such work and restore the Unit to its former condition, leaving the Unit clean and free from debris;
- (f) An Owner shall indemnify and save harmless the Corporation from the expenses of any maintenance, repair or replacement rendered necessary to the Common Property or any Unit by his act or omission or by that of any member of his family or his or their guests, servants, agents, invitees, licensees or tenants, but only to the extent that such expense is not met by the proceeds of insurance carried by the Corporation;
- (g) The Corporation shall co-operate with the Commercial Owner to ensure the prompt repair and restoration of any damage and the carrying out of any work or repairs in a proper and workmanlike manner and to ensure that insurance proceeds are used for that purpose.

**INSURANCE**

46. (a) The Board, on behalf of the Corporation shall obtain and maintain subject always to the Act, and in particular the requirements of Section 47 thereof and Section 46 (k), following, at all times, to the extent obtainable, the following insurance:
- (i) Fire insurance with extended coverage endorsement insuring all the insurable Common Property and all insurable property both real and personal of any nature whatsoever of the Corporation and all of the Units including all improvements and betterments made to the Units by the Owners of which it has knowledge and the bathroom and kitchen fixtures installed by the Developer therein (but not including furnishing or other personal property of the Unit Owners) for the full replacement cost thereof, without deduction for depreciation, and covering the interests of and naming as insured all Owners from time to time and also naming as insured their mortgagees (if such mortgagees have given written notice of their interest to the Corporation) and the Corporation, as their respective interests may appear;
  - (ii) Boiler insurance if any boilers or pressure vessels exist;
  - (iii) Such other insurance and coverage for such other risks or causes as the Board may determine or as may be determined by Special Resolution;
- (b) All policies shall provide that they may not be canceled or substantially modified without at least thirty (30) days prior written notice to all the insureds, including all mortgagees of Units who have given prior written notice to the Corporation of their interests. Prior to obtaining any policy of fire insurance or any renewal thereof and at least annually, unless waived at a general meeting of the Board, the Board shall obtain an appraisal from a qualified appraiser setting out the full replacement value of the Buildings including all of the Units and the Common Property and all property of the Corporation and the Board shall forthwith deliver a copy of each appraisal to each mortgagee who has given written notice to the Corporation of its interest. The Board shall maintain the insurance at the level required by these By-Laws and suggested by the said appraisal;
- (c) Exclusive authority to adjust losses and settle proceeds under policies hereinafter in force in the project shall be vested in the Board or its authorized representative or the insurance trustee, in the event such has been appointed;
- (d) In no event shall the insurance coverage obtained and maintained by the Board be brought into contribution with insurance purchased by Owners or their mortgagees and the Board's insurance shall be deemed to be primary insurance;
- (e) The Board shall also obtain and maintain public liability insurance insuring the Board and the Owners against any liability to the public or to the Owners and their invitees, licensees or tenants, incidental to the ownership or use of the project. Limits of liability under such insurance shall be not less than \$5,000,000.00 inclusive for bodily injury or property damage per occurrence;
- (f) The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion. The policy or policies shall provide a cross liability endorsement wherein the rights of a named insured under the policy or policies shall not be prejudiced as respects its, his, her or their action against another named insured;

- (g) Each insurance policy must insure the interest of the Corporation and the Owners, with standard mortgagee endorsements attached and shall also provide for:
  - (i) a waiver by the insurer of its subrogation rights against the Corporation, its manager, agents, employees and servants and the Owners and any member of the household or guests of any Owner or occupant of a Unit except for arson or fraud;
  - (ii) a waiver of the insurer of any defense based on co-insurance (provided that policies of physical damage may contain co-insurance on a stated amount basis as long as the appraisal requirements of this By-Law are met) or of invalidity arising from the conduct of or any omission or act or breach of a statutory condition by any insured;
  - (iii) a waiver of the insurer's option to repair, rebuild or replace in the event that after damage the condominium status is terminated;
- (h) A certificate or memorandum of all insurance policies and endorsements thereto shall be issued as soon as possible to each Owner upon written request having been made therefore, and to a registered mortgagee who has given written notice of his mortgage to the Corporation. A renewal certificate or memorandum of new insurance policies shall be issued to each registered mortgagee who has given written notice of his mortgage to the Corporation not later than ten (10) days before the expiration of any current insurance policy. The master policy for any insurance coverage shall be kept by the Corporation;
- (i) Notwithstanding the foregoing, the Owner may, and upon the written request of any mortgagee shall, carry insurance on their own Units as permitted by the Act provided that the liability of the insurers issuing insurance obtained by the Board shall not be affected or diminished by reason of insurance carried by an Owner. PROVIDED THAT in the event any use of any Unit shall lead to an increase in the fire or other insurance premiums otherwise payable on the insurance obtained by the Board, the party causing such increase shall be liable for payment of the same to the Corporation or individual Owner, as the case may be and such increase may be collected by the Corporation by adding the same to the Common Expenses allocated to such Owner;
- (j) Notwithstanding anything elsewhere contained herein, the proceeds of any insurance obtained by the Developer with respect to damage to or destruction of any Building or its Amenities or Equipment prior to the Turnover Date with respect to such Building shall be paid to the Developer or, if such payment is not permitted by law, applied to reconstruction or repair of such Building or its Amenities or Equipment as the case may be.
- (k) Notwithstanding anything contained in this section 46, and not in substitution or replacement thereof or anything contained in these Bylaws:
  - (i) The Corporation shall take out and keep in force, upon such terms and conditions and in such amounts and deductibles as would be maintained by a prudent owner of a property similar to the Residential Development, the following insurance.
    - (A) all risks property insurance with respect to the Residential Development, including property of every kind owned by Corporation, or for which the Corporation is legally liable, or installed by or on behalf of the Corporation in the Residential Development, with limits for each accident in an amount of not less than the full

replacement cost thereof without any deduction for depreciation and without co-insurance provisions. Such coverage shall insure against fire and all other perils as are from time to time included in the standard "all risks" coverage including, without limitation, sprinkler leakages (where applicable) and earthquake, flood and collapse, where available and carried by prudent owners, and shall be subject to a replacement cost valuation;

(B) broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement cost of the Residential Development and to include all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned and operated by the Corporation or others, on behalf of the Corporation in or serving the Residential Development, on a replacement cost basis and without co-insurance provisions to apply or allowance for depreciation;

(C) commercial general liability insurance on an occurrence basis for third party liability including property damage, bodily injury (including personal injury), blanket contractual liability, host liquor liability, non-owned automobile liability, and products and completed operations with respect to the Residential Development and the Corporation's use of the Residential Development; coverage to include the activities conducted by the Corporation and any of its servants, agents, contractors, subcontractors and persons for whom the Corporation is in law responsible, in any part of the Residential Development; such policies shall have inclusive limits of at least Five Million Dollars (\$5,000,000) for each occurrence or such higher limits as shall be agreed upon;

(D) such other forms of insurance (save and except mortgage insurance) as the Corporation and any mortgagee may from time to time consider advisable, acting reasonably and to the extent required of prudent owners of property similar to the Residential Development;

(ii) Each of such insurance policy shall:

(A) with respect to the all risk property policy, boiler and machinery policy and loss of rental income insurance policy, contain an endorsement whereby the right of subrogation against the Commercial Owner, its servants, agents, employees and those for whom the Commercial Owner is responsible in law, including the tenants of the Commercial Space (the "Commercial Tenants") and those for whom the Commercial Tenants are responsible in law, (excluding such parties' independent contractors), is waived, if such waiver is available;

(B) with respect to the commercial general liability insurance, such policy shall contain an endorsement whereby the Commercial Owner and the Commercial Tenants, its servants, agents and employees are included as additional insureds on a non-reporting basis, a cross-liability and severability of interest clause. The Corporation's insurance policy shall be primary and respond firstly to any claim, loss or damage, (unless in respect of claims, losses or damages caused by the negligent acts, omissions or wilful misconduct of the Commercial Owner, its servants, agents, employees, contractors, and the Commercial Tenants or those persons for whom each is responsible in law);

(C) a waiver of breach of conditions clause in respect of the interests of the Commercial Owner; and

(D) an undertaking by the insurers that no change that reduces or restricts coverage or amends the cost of the insurance, cancellation or termination of any policy will be made unless the insured has received not less than 30 days prior written Notice.

- (iii) The Corporation agrees to provide the Commercial Owner with such information as it may reasonably require prior to its obtaining policies with respect to the Residential Development to enable each other to determine that such coverage is adequate in terms of, but without limitation, the security provided, limits of coverage, deductibles and cost of the premiums. If either party fails to respond to the other within two (2) weeks of receiving all such information as each of them may reasonably require, the other shall be deemed to have approved of such coverage for the applicable policy period to which the approval relates. Each shall advise the other of any comments relating to such policies in order that mutually acceptable amendments, if required, may be made.
- (iv) The Corporation does hereby absolutely release and discharge the Commercial Owner, its servants, agents, employees and those for whom the Commercial Owner is responsible in law (excluding the Commercial Owner's independent contractors), the owners of the Retail Units and the Commercial Tenants and those for whom such parties are responsible in law, with respect to all costs, losses, damages and expenses suffered or incurred by the Corporation and any Owners arising out of or in any way related to, in whole or in part, any matter in respect of which the Corporation is insured or is required to insure under these Bylaws.
- (v) **Benefit to Other Parties**

Every exemption from liability, indemnity, waiver or release from liability of any nature whatsoever contained in these Bylaws which is expressed as being applicable to the Corporation and any Owner or the Commercial Owner and the owners of the Retail Units, and whether or not expressed as being applicable to or for the benefit of or entitlement of those for whom the Corporation and any Owners or the Commercial Owner and the owners of the Retail Units are responsible in law, including the Corporation's employees and Commercial Owner's employees and their respective directors, officers, servants, and agents, shall be deemed to extend to, grant rights or causes of action in favour of, and protect, indemnify and hold harmless as the case may be, any person for whom either the Corporation and the Owners or the Commercial Owner and the owners of the Retail Units and the Commercial Tenants, as the case may be, is in law responsible, including its employees, and for the purposes of these Bylaws, the Corporation or Commercial Owner, as the case may be, shall be deemed to be acting as agent or trustee on behalf of and for the benefit of each Owner and the owners of the Retail Units and Commercial Tenants and any and all persons for whom it or they are now or may hereafter in law (excluding their respective independent contractors) be responsible, including its employees.

- (vi) The Corporation shall obtain all necessary insurance coverages from the same insurer as the Commercial Owner

#### **ASSESSMENTS FOR COMMON EXPENSES AND BUDGETS**

- 47. (a) The Common Expenses of the Corporation, shall, without limiting the generality hereof, include the following: